

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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PERRY A. FRANKEL, M.D. AND ADVANCED  
CARDIOVASCULAR DIAGNOSTICS, PLLC,

PLAINTIFFS

**CASE NO. 18-cv-6378-ER-BCM**

-AGAINST-

U.S. HEALTHCARE, INC. d/b/a AETNA  
U.S. HEALTHCARE, AETNA, INC. AND AETNA, INC.,

DEFENDANTS  
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**STIPULATION OF  
DISMISSAL OF  
COMPLAINT WITH  
PREJUDICE**

**WHEREAS**, on or about May 25, 2018, Perry A. Frankel, M.D. and Advanced Cardiovascular Diagnostics, PLLC (collectively, the “Plaintiffs”), filed a summons and complaint (the “Complaint”) in the Supreme Court of the State Court of New York, County of New York against U.S. Healthcare, Inc. d/b/a Aetna U.S. Healthcare, Aetna, Inc. and Aetna, Inc. (collectively, the “Defendants”);

**WHEREAS**, on July 13, 2018, the Defendants filed a Notice of Removal and this case was removed to the United States District Court, Southern District of New York;

**WHEREAS**, on August 21, 2018, the Plaintiffs filed an amended complaint at ECF Doc. No. 15;

**WHEREAS**, on November 5, 2018, Defendants filed a Motion to Dismiss at ECF Doc. Nos. 28, 29 and 30;

**WHEREAS**, on December 5, 2018, Plaintiffs filed an Affirmation in Opposition to Defendants’ Motion to Dismiss at ECF Doc. No. 32;



**WHEREAS**, on December 19, 2018, Defendants filed a Reply in Response to Plaintiffs' Affirmation in Opposition to Defendants' Motion to Dismiss at ECF Doc. No. 33;

**WHEREAS**, on September 17, 2019, this Court issued an Opinion and Order on Defendants' Motion to Dismiss Granting Defendants' Motion to Dismiss as to Counts I, II, IV-XI, and Denying Defendants' Motion to Dismiss as to Count III. The Court also Denied Plaintiffs' request to amend the complaint at ECF Doc. No. 34;

**WHEREAS**, on October 15, 2019, Defendants filed an Answer to Plaintiffs' Amended Complaint at ECF Doc. No. 37;

**WHEREAS**, on October 17, 2018, this Court entered a Civil Case Discovery Plan and Scheduling Order at ECF Doc. No. 38;

**WHEREAS**, no party hereto is an infant or incompetent person for whom a committee or guardian has been appointed;

**IT IS HEREBY STIPULATED AND AGREED**, by and between Plaintiffs' counsel, and counsel for the Defendants, that:

1. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff voluntarily dismisses the Complaint with prejudice, with each party to bear its own fees and costs.
2. This stipulation may be executed in counterparts, each of which constitutes an original and all of which constitutes one and the same agreement.



3. Facsimiles or emails of signatures shall constitute acceptable, binding signatures for purposes of this stipulation.

Dated: White Plains, New York  
April 22, 2020

Dated:  
April 22, 2020

Respectfully submitted,

/s/ Todd S. Cushner

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*Counsel for Defendants*